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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,702	08/28/2003	Yasuhiro Akiyama	501.43083X00	6753

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MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C.  
1800 DIAGONAL ROAD  
SUITE 370  
ALEXANDRIA, VA 22314

EXAMINER
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GREY, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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2616

MAIL DATE	DELIVERY MODE
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06/25/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/649,702

Applicant(s)

AKIYAMA ET AL.

Examiner

Christopher P. Grey

Art Unit

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 4 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 4 is an exact replica of claim 3, however claim 4 depends on claim 3, which makes it improper and repetitive.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 6-13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 line 6 discloses, "said time". It is unclear whether or not the time references the time of the timer or the receiving start time disclosed previously in the claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(e) as being anticipated by Patel et al. (US 6731600), hereinafter referred to as Patel.

**Claim 1** Patel discloses an input unit for image data (Col 5 lines 46-54, server computer maintains and stores data objects of any type, where the memory needed for storage is equivalent to an input).

Patel discloses an image reconstruction unit (fig 4, 426 to 404, where whatever unit within the server computer that accepts and processes the transmission bandwidth for adjustment, is equivalent to reconstructing the image data, as a change of the data rate of the image data is equivalent to reconstruction);

Patel discloses a communications unit (fig 4, where the server computer is in communication with the client computer, thus any component within the server computer used for communication is equivalent to a communication unit) connected to a terminal (fig 4, client computer); and generating a monitoring trigger information that said terminal performs a receiving bit rate monitoring (fig 4, 404, server computer generated a first packet containing information that initiate monitoring

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information, Col 10, lines 5-25 and Col 10 lines 42-52, where the identifiers added to the packets indicate first and second packets which are used for monitoring in the client computer).

Patel discloses said monitoring trigger information generating unit inserting the generated monitoring trigger into image data inputted through said input unit and outputs it to the terminal through said communication unit (**Col 10 lines 5-25, where the identifier is inserted in the header**).

**Claim 2** Patel discloses a bit rate switching control unit for feeding said image data to said terminal (**fig 4, 404 and 408, the unit used for the transmission of data as in 404 and 408 is equivalent to the control unit**), and when said communication unit receives an image bit rate request command from said receiving terminal (**fig 4, 426, server computer receives calculated transmission bandwidth from client/receiving computer**), said image reconstruction unit switches the image bit rate to an image bit rate specified by said command to deliver the image data (**Col 12 lines 1-3, the unit being used to adjust the transmission rate in the server is equivalent to the reconstruction unit**).

**Claim 5** Patel discloses a communication unit connected to a distribution server (**fig 1, 110, server**).

Patel discloses a reproducing unit for a received image data (**fig 2, 202, and Col 6 lines 1-3, displaying the object to the user is equivalent to reproducing**).

Patel discloses a monitoring unit for monitoring a receiving bit rate of said received image data (**fig 2 206**).

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Patel discloses an analysis unit for said received image data .

Patel discloses said analysis unit extracts a monitoring trigger from said image data **(Col 10 lines 42-52, where examination of the header is equivalent to analysis, and examining the header to make a determination is equivalent to extracting the given information, where extraction in its broadest sense is defined as to obtain or deduce).**

Patel discloses said monitoring unit performs said monitoring through utilization of said monitoring trigger **(Col 10 lines 42-52, where after the determination of the header information is made, a monitoring procedure is initiated).**

Patel discloses said monitoring unit feeds the distribution bit rate switching information of said image data through said communication unit in response to said receiving bit rate to be monitored **(fig 4, 426 and Col 12 lines 1-3).**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Patel et al. (US 6731600)

**Claim 3, 4** Patel discloses wherein as said monitoring trigger, a transmission start time for a fragment to be transmitted next is inserted into image data to be distributed **(Col 8 lines 14-16, subsequent timestamps and fig 3, 312).**

Patel does not specifically disclose an extension part of the image data, however, it would have been obvious to one of the ordinary skill in the art at the time of the invention that the dedicated portion of the data where the timestamp is inserted is equivalent to an extension because without the insertion of the timestamp that dedicated portion is unnecessary. The motivation for this extension is to transmit timestamp information at predetermined intervals **(Col 9 lines 30-35).**

***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(a) Coulombe et al. (US 7043560) discloses a method and apparatus for measuring a bit rate b/w a client and a server.

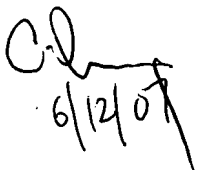
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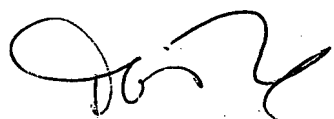
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Grey whose telephone number is (571)272-3160. The examiner can normally be reached on 10AM-7:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Doris To can be reached on (571)272-7629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher Grey  
Examiner  
Art Unit 2616

  
6/12/07

  
DORIS H. TO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600